82-948

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

WARREN L. BEAN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

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QUESTION PRESENTED FOR REVIEW

May a wallet discovered on the person of a defendant properly be searched as part of the booking procedure or as a delayed search incident to arrest?

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OPINION BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, is reported at 107 Ill. App. 3d 662, 437 N.E.2d 1295. (See Appendix A). The order of the Illinois Supreme Court denying leave to appeal is not reported but is attached hereto. (See Appendix B).

JURISDICTION

The opinion of the Illinois Appellate Court, Third Judicial District, was filed on July 12, 1982. A timely petition for leave to appeal was filed by the petitioner in

the Illinois Supreme Court. The order of the Illinois Supreme Court denying the petition for leave to appeal was entered on October 5, 1982.

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3). The instant petition for writ of certiorari is filed within 60 days of the Illinois Supreme Court's order denying leave to appeal.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV, provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV, provides that:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The respondent was originally charged with the unlawful possession of less than 30 grams of lysergic acid diethylamide (LSD) on November 9, 1981. (C. 9) On December 7, 1981, a motion to suppress evidence was filed on behalf of the respondent. (C. 18) A hearing was held on the respondent's motion on January 4, 1982.

Defense counsel and the prosecutor stipulated to the facts of the respondent's search at that hearing. (C. 32) The stipulation of facts was recited by defense counsel. According to defense counsel, Officers Randy Brown and Jay Davis of the Rock Island, Illinois Police Department were investigating a disturbance outside the apartment house in which the defendant resided on July 7, 1981. Officer Brown observed the respondent going into the apartment house after the disturbance had apparently subsided. (C. 32-33) There was no evidence to indicate that the respondent had been involved in the disturbance.

The officer then entered the apartment building and another disturbance of some type arose between Officer Brown and the respondent. As a result of the respondent's actions, he was arrested for aggravated battery and resisting arrest. The State subsequently reduced the aggravated battery charge to a charge of simple battery. (C. 32-33)

Thereafter, the respondent was taken from the apartment house to the police station for booking. During the booking procedure, the respondent was ordered to turn over all of his personal property, including his clothing. Subsequently, the police searched the wallet of the respondent which had been turned over to them as part of the booking procedure. (C. 32-33)

It was stipulated that there was no probable cause to believe that the respondent was carrying drugs at the time of the search. (C. 32-33) It was also stipulated that the evidence was not in plain view. That is, the wallet had to be opened in order to find the substance allegedly containing LSD which was the basis of the instant charge. (C. 32-34) It was also agreed that there was no consent for the search by the respondent. Finally, it was stipulated that the wallet was an ordinary wallet carried in the respondent's pocket. (C. 32-34)

The defense argued, citing the Illinois Appellate Court's opinion in *People v. Lafayette*, 99 Ill. App. 3d 830, 425 N.E.2d 1383 (3d Dist. 1981), *petition for writ of certiorari granted*, ... U.S. ..... (No. 81-1859, November 8, 1982), that the respondent's wallet was the functional equivalent of a shoulder bag or purse. Therefore, the defense concluded that the search of the respondent's wallet following a valid custodial arrest was unreasonable and violated the respondent's Fourteenth Amendment rights. (C. 32-35)

The prosecutor argued that the search of the respondent's wallet was a valid inventory search and that it protected the police from false claims that items in the wallet were stolen while in police custody. The assistant state's attorney also argued that the search was a valid custodial search of the respondent. (C. 32-38)

The trial judge took the matter under advisement until January 6, 1982, when she informed counsel by letter that respondent's motion to suppress would be granted on the basis of *People v. Lafayette*. (C. 20-21) The order suppressing the alleged drugs was entered on January 12, 1982. (C. 22-23)

The Illinois Appellate Court, Third Judicial District, affirmed the trial court's order suppressing evidence.

The appellate court stated that this Court's opinions in *United States v. Chadwick* and *Arkansas v. Sanders* limited the search incident to arrest exception to the warrant requirement announced in this Court's opinions in *United States v. Robinson* and *United States v. Edwards*. Relying on its prior decision in *People v. Lafayette*, the appellate court held that after *Chadwick* and *Sanders*, the search-incident-to-arrest exception to the warrant requirement will no longer authorize delayed searches of items immediately associated with the arrestee absent a showing of probable cause.

The petitioner herein, the State of Illinois, sought timely leave to appeal the decision of the Illinois Appellate Court in the Illinois Supreme Court, but leave was denied.

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

THE DECISION OF THE ILLINOIS APPELLATE COURT SUBSTANTIALLY LIMITS A POLICE OFFICER'S RIGHT TO SEARCH A DEFENDANT INCIDENT TO ARREST AND TO CONDUCT AN INVENTORY SEARCH OF A DEFENDANT DURING THE BOOKING PROCEDURE.

In this case, the appellate court, relying on *People v. Lafayette*, 99 Ill. App. 3d 830, 425 N.E.2d 1383 (3d Dist. 1981), *petition for certiorari granted*, ... U.S. ..... (No. 81-1859, November 8, 1982), *United States v. Chadwick*, 433 U.S. 1 (1977), and *Arkansas v. Sanders*, 442 U.S. 753 (1979), found that the police officers should have merely sealed the respondent's wallet rather than search the wallet to discover contraband or to inventory its contents. The appellate court's holding is erroneous. The petitioners submit that an individual under custodial arrest has no more expectation of privacy in a wallet carried in his pocket than he does in a purse carried at the time of his arrest. This Honorable Court has already granted review of the latter question presented in *Illinois v. Lafayette*. The petitioners respectfully request that review be granted in the instant case where the same Illinois Appellate Court which decided *Illinois v. Lafayette* applied the same faulty logic in suppressing evidence discovered in a wallet during a booking procedure.

There is no question that the respondent in the instant case was lawfully under custodial arrest. Pursuant to custodial arrest, the police may search a person in order to remove any weapons that the latter might seek to use in order to resist arrest or effectuate his escape. The police may also seize any evidence on the arrestee's per-

son in order to prevent its concealment or destruction. *Chimel v. California*, 395 U.S. 752, 763 (1969).

The authority to search a person incident to a lawful arrest, while based on the need to disarm and discover evidence, does not depend on what a court may later decide was a probability in a particular situation that a weapon or evidence would, in fact, be found.

> A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is a "reasonable" search under that Amendment.

United States v. Robinson, 414 U.S. 218, 235 (1973).

Likewise, the search of the respondent was permissible as an inventory search. When a person is subjected to incarceration, the police may properly search the individual for the protection of the police, the preservation of the defendant's property, and the protection of the police from claims of lost or stolen property. *See South Dakota v. Opperman*, 428 U.S. 364 (1976).

The only remaining question concerns the proper scope of a search incident to arrest or inventory search. In the instant case, the Illinois Appellate Court aligned the case at bar with those cases which hold that the police need a warrant to search closed containers seized from a defendant such as attache cases or luggage. The appellate court's reliance is misplaced. *United States v. Chadwick* and like cases only prohibit a search of containers "not immediately associated with the person of

the arrestee. . . ." (433 U.S. at 15) as part of an inventory search pursuant to an arrest. Items found on the person of the arrestee, even if found in closed containers, have always been subject to search and seizure without a warrant. For instance, in *United States v. Robinson*, heroin discovered in a cigarette container taken from the defendant during a custodial arrest was held admissible. Likewise, in *Gustafson v. Florida*, 414 U.S. 260 (1973), marijuana cigarettes were discovered in a cigarette box found on the defendant's person during a search incident to arrest. That evidence was held admissible.

This Court has repeatedly held that, following a lawful arrest "both the person and the property in his immediate possession may be searched at the station house after the arrest has occurred at another place and if evidence of the crime is discovered, it may be seized and admitted into evidence." *United States v. Edwards*, 415 U.S. 800, 803 (1974); *Gustafson v. Florida*, 414 U.S. at 264; *United States v. Robinson*, 414 U.S. at 224. The items that may lawfully be seized incident to an arrest have been variously described as, "The effects in [the defendant's] immediate possession that constitute evidence of crime," "the personal effects of the accused," and "any evidence of crime in [the defendant's] immediate possession." *United States v. Edwards*, 415 U.S. at 805. The right to conduct such a search exists whether or not the agent believes he is exposed to danger or suspects that the defendant has access to destructible evidence. *United States v. Chadwick*, 433 U.S. at 14; *United States v. Robinson*, 414 U.S. at 234.

Those federal cases which have specifically dealt with evidence discovered in a wallet or in a container found in a wallet have likewise upheld the admissibility of the evidence. *United States v. McEachern*, 675 F.2d 618 (4th

Cir. 1982); *United States v. Passaro*, 624 F.2d 938 (9th Cir. 1980), *cert. denied*, 449 U.S. 1113 (1981); *United States v. Ziller*, 623 F.2d 562 (9th Cir. 1980), *cert. denied*, 449 U.S. 877 (1980); *United States v. Castro*, 596 F.2d 674 (5th Cir. 1979), *cert. denied*, 444 U.S. 963 (1979); *United States v. Basurto*, 497 F.2d 781 (9th Cir. 1974); *United States v. Jenkins*, 496 F.2d 57 (2d Cir. 1974), *cert. denied*, 420 U.S. 925 (1975); *United States v. Gardner*, 480 F.2d 929 (10th Cir. 1973), *cert. denied*, 414 U.S. 977 (1973).

In *Passaro*, the United States Court of Appeals for the Ninth Circuit was specifically asked to make a choice between the *Chadwick* and *Robinson* line of cases. In that case, the court ruled that the search of the defendant's wallet was permissible as incident to arrest even though the evidence seized therefrom was unrelated to the crime for which the defendant was arrested. The court ruled that *Chadwick* was not applicable since, "Unlike a double-locked footlocker, which is clearly separate from the person of the arrestee, the wallet found in the pocket of [the defendant] was an element of his clothing, his person, which is, for a reasonable time following a legal arrest, taken out of the realm of protection from police interest." 624 F.2d at 944.

Other state courts have also upheld wallet and cigarette box searches under facts almost identical to the case at bar. *State v. Gelvin*, 318 N.W.2d 302 (N.D. 1982), *cert. denied*, ... U.S. ..... (No. 81-2254, November 8, 1982); *State v. Lind*, 322 N.W.2d 826 (N.D. 1982); *State v. Snyder*, 629 S.W.2d 930 (Tex. Ct. App. 1982); *People v. Brooks*, 405 Mich. 225, 274 N.W.2d 430 (1979); *State v. Nesmith*, 40 N.C. App. 748, 253 S.E.2d 594 (1974); *State v. Brown*, 624 P.2d 212 (Ore. 1981); *State v. Duplantis*, 388 So.2d 751 (La. 1980), *cert. denied*, 449 U.S. 1015 (1980); *State v. Dubay*, 313 A.2d 908 (Me.

1974); *State v. Florence*, 527 P.2d 1202 (Ore. 1972); *State v. McElroy*, 202 N.W.2d 752 (Neb. 1972). In *State v. Brown*, the Oregon Supreme Court also squarely addressed the "face off" between the *Robinson* line of cases and the *Chadwick* line of cases as to which rule of law applies when items found on the person of a lawfully-arrested defendant are searched. In that case, a metal cigarette box was found on the person of the defendant when he was searched at the police station subsequent to a lawful arrest. Defendant, as in the instant case, argued that the cigarette box was a closed container and was not subject to search absent a warrant. Concluding that the search was proper, the court held that:

> [T]he *Chadwick* case by its own language has distinguished it from the *Robinson*, *Gustafson*, and *Edwards* case. By using the phrase "personal property not immediately associated with the person of the arrestee," the *Chadwick* case had exempted from the application of its ruling personal property discovered as a result of a search of the person, such as "wallets, cigarette boxes, and the like."

624 P.2d 218.

Furthermore, the Illinois Appellate Court's suggestion that this Court's opinions in *Robinson* and *Gustafson* have somehow been limited by *Chadwick* was recently dispelled by this Court in *New York v. Belton*, 453 U.S. 454 (1981). In that case, this court reaffirmed the *Robinson* rule that a full search of the person subject to a custodial arrest is reasonable and is an exception to the warrant requirement. 453 U.S. at 459. Likewise, in *United States v. Ross*, ... U.S. ....., 102 S. Ct. 2157 (1982), this court noted that, "A container carried at the time of arrest often may be searched without a warrant and even without any specific suspicion concerning its contents." 102 S. Ct. at 2171.

It cannot seriously be contended that the case at bar is distinguishable from *United States v. Robinson*, *United States v. Edwards*, *Gustafson v. Florida*, or *People v. Lafayette* because this case involves a wallet. Obviously, the defendants in those cases had as much expectation of privacy in cigarette containers found in their pockets or shoulder bag as the respondent in the instant case did in his folded wallet. Indeed, there does not seem to be any justification for believing that any defendant has a greater expectation of privacy in containers carried in his pocket than he does in items carried loosely in his pocket. In either case, any expectation of privacy the defendant objectively or subjectively has is irrelevant once the defendant is subject to a valid custodial arrest. *United States v. Robinson*, 414 U.S. 218 (1973).

The petitioners submit that the case law is clear—any items discovered on the person of a defendant after his arrest may be searched without a warrant as a search incident to the arrest or as an inventory search of the defendant's personal effects when he is incarcerated. It would be naive and pointless to assume that law enforcement officials may store an arrestee's personal effects without first determining what it is they are inventorying. *People v. Walker*, 58 Mich. App. 519, 228 N.W.2d 443 (1975). The purpose of an inventory would be emasculated since an arrestee could later claim that some valuable item was within a personal effect and the law enforcement officials would be powerless to affirm or deny the assertion. Then too, it is obvious that knives can be secreted in wallets and like containers. *United States v. Simpson*, 453 F.2d 1028, 1031 (10th Cir. 1972), *cert. denied*, 408 U.S. 925 (1972).

Carried to its logical conclusion, the Illinois Appellate Court's opinion in this case would lead to ludicrous results. For instance, there can be little question that an

individual has a subjective expectation of privacy in his pants pocket. Such a pocket is also a receptacle or container for items of personal property. It is not hard to foresee an argument, based on the instant decision, that police officers cannot search the pants pocket of an arrestee, but must merely put evidence tape around the pants. The instant decision, if left undisturbed, destroys the custodial search and seizure incident to arrest doctrine and severely limits the use of inventory searches during the booking procedure.

CONCLUSION

For the reasons and arguments stated herein, the petitioners respectfully request that a writ of certiorari issue to the Appellate Court of Illinois, Third Judicial District, to review that court's decision which affirmed the trial court's decision to suppress evidence.

Respectfully submitted,

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December 4, 1982

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APPENDIX A

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 1982

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

No. 82-52 *v.*

WARREN L. BEAN,

Defendant-Appellee.

Appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois.
Honorable **Susan B. Gende**, *Presiding Judge.*

Mr. JUSTICE STOUDER delivered the opinion of the Court.

An information filed in the circuit court of Rock Island County charged the defendant, Warren L. Bean, with unlawfully possessing less than 30 grams of a substance containing lysergic acid diethylamide (LSD), a controlled substance. The defendant moved to suppress the contraband, arguing that it was the fruit of an illegal warrantless search. The circuit court agreed and ordered the evidence to be suppressed. The State appeals from that ruling. We affirm.

The circumstances surrounding the search, as stipulated by the parties, are sparse. On July 7, 1981, two Rock Island police officers arrested the defendant for resisting arrest and aggravated battery after a disturbance took place between the defendant and one officer

outside the defendant's apartment. We assume that the defendant had been patted down for weapons and had been restrained, but that police had not then removed his personal property from him. They escorted him to the station house for booking, and, according to established police "booking procedures and inventory search," ordered him to surrender all his personal property, including his clothing and wallet. The defendant had kept the wallet, which was of a common billfold variety, in either his pants or shirt pocket. No contraband was visible from the folded wallet; an officer opened it and eventually discovered the controlled substance. Although the record is silent, we assume the LSD was held in some sort of package of its own, which the officer ripped open. At the suppression hearing, the defendant did not dispute that he was lawfully arrested for the offenses arising from the ruckus with the officer. Also, the State stipulated that the police had no probable cause to believe that the defendant possessed any controlled substances when his wallet was searched. Following the conclusion of counsels' arguments, the court granted the suppression motion, finding that, while the State had lawfully arrested the defendant, the delayed warrantless search of his wallet, which contained its own expectation of privacy independent from the arrestee's body, was unlawful as either a search incident to his arrest or an inventory search.

On appeal the State, relying on the recent opinion of *People v. Hughes* (3rd Dist., 1982), 105 Ill. App. 3d 738, 434 N.E.2d 828, renews its contention that the search of the defendant's wallet was lawful whether the search is viewed as incident to the defendant's lawful arrest or as an inventory of his possessions. On the other hand, the defendant argues that our recent decision in *People v. Lafayette* (3rd Dist., 1981), 99 Ill. App. 3d 830, 425 N.E.2d 1383, which the circuit court relied on in granting the motion to suppress, controls and mandates that we affirm the suppression order.

As Justice Powell commented in *Arkansas v. Sanders* (1979), 442 U.S. 753, 61 L. Ed. 2d 235, 99 S. Ct. 2586, while the general principles applicable to claims of fourth amendment violations are well established, state

and federal courts continue to be deluged with requests to exclude probative evidence in part because court decisions seemed to turn upon apparently infinitesimal factual differences. (See also Ross, *Search and Seizure Law Report*, vol. 8, No. 9 (Sept. 1981).) Today we address one area of fourth amendment law that has indeed spawned a considerable amount of case law recently: the warrantless postponed or station house search of a piece of personal property, which the police have no independent probable cause to examine, following the defendant's lawful arrest. A brief review of this body of law illustrates the competing principles.

In *Chimel v. California* (1969), 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034, the Supreme Court affirmed the principle that a warrantless contemporaneous search incident to a lawful custodial arrest did not violate the fourth amendment. A search of the individual arrested may be made because, once arrested, he surrenders his right to privacy, which the fourth amendment protects. A custodial arrest also authorizes a search of the area within the arrestee's immediate control to prevent the arrestee from destroying evidence, becoming armed, or escaping. In *United States v. Robinson* (1973), 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467, the Supreme Court emphasized that the lawful custodial arrest itself was a reasonable intrusion; once that was established, a warrantless search incident thereto required no separate probable cause or exigent circumstance. In *United States v. Edwards* (1974), 415 U.S. 800, 39 L. Ed. 2d 771, 94 S. Ct. 1234, the Supreme Court appeared to extend the search incident to arrest rule to delayed warrantless searches of the arrestee and his belongings after he had been arrested and placed in custody. There, one day after the defendant's arrest, police took his clothing and searched it for evidence. Relying heavily upon the holding in *Robinson*, Justice White, speaking for a five member majority, reasoned that because the warrantless search could have been made on the spot when the defendant was arrested, the same search could also have been made later when the arrestee was incarcerated. In a footnote, however, the court noted that, independent of the arrest, the police had probable cause to search and seize

the arrestee's clothing at the station house. Notwithstanding the cautionary footnote in *Edwards*, many courts believed after *Robinson* and *Edwards* that a lawful arrest was the sole requirement authorizing a warrantless search, either during the arrest or later at the station house, of the arrestee as well as any items within the arrestee's immediate control. See, 2 W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 5.5, n. 12, at 350 (1978).

Then the Supreme Court appeared to limit or at least re-examine the search incident to arrest exception to the warrant requirement in *United States v. Chadwick* (1977), 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476. There the government arrested the defendants immediately after they had placed a locked footlocker in the open trunk of their car. Agents also seized the footlocker, which had been located a few feet from the arrestees, and later opened it at the station house without obtaining a warrant. It contained marijuana. In affirming the defendants' motion to suppress, the Supreme Court rejected the government's argument that the footlocker was seized incident to the defendants' lawful arrest. Emphasizing the defendants' legitimate expectation of privacy in the footlocker's contents, as evinced by the closed, locked container, the court held that such rights were not diminished merely because the defendants were arrested nearby: "(u)nlike searches of the person, *United States v. Robinson* (1973), 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467; *United States v. Edwards* (1974), 415 U.S. 800, 39 L. Ed. 2d 771, 84 S. Ct. 1234, searches of possessions within an arrestee's immediate control cannot be justified by any reduced expectations of privacy caused by the arrest." (*United States v. Chadwick* (1977), 433 U.S. 1, 16 n. 10, 53 L. Ed. 2d 538, 551 n. 10, 97 S. Ct. 2476, 2486 n. 10.) The court, while reaffirming the principle that a contemporaneous search incident to a custodial arrest may be conducted without a warrant or independently based probable cause, rejected the government's contention that the search can later be made at the station house: "* * * warrantless searches of luggage or other property seized at the time of an arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place

from the arrest,' (citation) or no exigency exists. Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest." (*United States v. Chadwick* (1977), 433 U.S. 1, 15, 53 L. Ed. 2d 538, 550-51, 97 S. Ct. 2476, 2485.) The Supreme Court applied *Chadwick* in *Arkansas v. Sanders* (1979), 442 U.S. 753, 61 L. Ed. 2d 235, 99 S. Ct. 2586, to invalidate a delayed warrantless search of an unlocked suitcase, finding that because a suitcase was in its fundamental character a repository for personal, private effects, a legitimate expectation of privacy arose in the contents. In a concurring opinion the author of *Chadwick*, Chief Justice Burger, said legitimate expectations of privacy in the contents of a container were not diminished upon arrest even where the arrestee carries the container in his hand. Since *Sanders*, the Supreme Court had made clear that the nature of the container is not determinative of whether its contents are to be clothed with legitimate expectations of privacy, saying that all containers must, in the eyes of the fourth amendment, afford the same degree of privacy to the contents held within. *United States v. Ross* (1982), ... U.S. ....., 72 L. Ed. 2d 573, 102 S. Ct. 2157.

The authorities submitted by the parties, *Lafayette* and *Hughes*, show the uncertain effect *Chadwick* and its progeny have had on *Robinson* and *Edwards*. In *Lafayette* we held that a warrantless station house search of the defendant's shoulder bag following his lawful arrest did not constitute a search incident to arrest and was therefore illegal. After comparing the defendant's purse-like shoulder bag to a container such as the one in *Sanders*, the *Lafayette* court concluded that, because the bag was a repository for personal items, those contents were clothed with legitimate expectations of privacy that were not diminished when the defendant was arrested. In reaching this conclusion, *Lafayette* relied on the language in *Chadwick* indicating that an arrest alone did not diminish legitimately held expectations of privacy in per-

sonal property even though it may have been lying within the arrestee's immediate control. Once the defendant was restrained and his purse taken into police possession, it could no longer be argued that the search of its contents was justified to prevent the arrestee from destroying evidence, becoming armed, or escaping. (See also *People v. Helm* (1981), 89 Ill. 2d 34, 431 N.E.2d 1033) (station house search of the arrestee's purse not incident to her lawful arrest).) *Hughes*, on the other hand, specifically involved the legality of a so-called second look or subsequent station house search of personal property, a wallet, which had been previously seized from the defendant's person during booking following his arrest. In *dicta*, however, the court discussed the first search, saying it was lawful even though police had no independent probable cause or exigent circumstance to search the wallet. *Hughes* interpreted *Chadwick* more narrowly, finding that it applied only to "'personal property not immediately associated with the person of the arrestee.'" (*People v. Hughes*, (3rd Dist., 1982), 105 Ill. App. 3d 738, 741, 434 N.E.2d 828, 830, quoting from *United States v. Chadwick* (1977), 433 U.S. 1, 15, 53 L. Ed. 2d 538, 551, 97 S. Ct. 2476, 2485.) The *Hughes* court reasoned that because the wallet was contained in the defendant's clothing at the time he was arrested, it was "immediately associated" with the defendant and thus fell within the exception to *Chadwick*. The court then applied *People v. Richards* (3rd Dist., 1981), 103 Ill. App. 3d 1120, 432 N.E.2d 276, *leave to appeal allowed* (No. 56275) (June 4, 1982), to find that the evidence was nonetheless inadmissible because the second search was made without a warrant.

Because *Hughes*'s discussion of *Chadwick* did not form the basis of that court's opinion regarding the propriety of the warrantless second search, we do not feel bound by its reasoning. Therefore, we hold that the station house search of the defendant's wallet was unlawful because, regardless of whether the lawful arrest excused the requirement of a warrant, the search was not founded upon independently based probable cause. We can discern no possible distinction for fourth amendment purposes between the wallet here and the purse or shoulder bag in

Lafayette or *Helm*; legitimate expectations or privacy reposed in both containers. Merely because a wallet folds shut while a purse may fasten shut will not change a person's rights under the fourth amendment, for every container which shields its contents from plain view provides constitutionally enforced protection to its owner. *United States v. Ross* (1982), ... U.S. ....., 72 L. Ed. 2d 572, 102 S. Ct. 2157.

Even assuming that a constitutionally viable distinction exists between items immediately associated with the arrestee's person *(Chadwick)* and items within the arrestee's immediate control *(Chimel)* as was suggested in *Hughes* (see also 2 W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* §5.5(a) (1978)), we refuse to follow *Hughes* insofar as it excuses not only the warrant requirement, but also the requirement of independently based probable cause when police conduct delayed warrantless searches of the contents of a container immediately associated with the arrestee's person. Prior to *Edwards* the fourth amendment's guarantees of probable cause and a warrant based thereon were inexorably tied together. *Chimel* and *Robinson* held that a contemporaneous search incident to arrest not only excuses the requirement that a search be preceded by a judicially issued warrant, but also that a search be conducted without separately established probable cause. *Edwards* extended the search incident to arrest rule to station house searches but only addressed the issue of whether a warrant was necessary to search items immediately associated with the arrestee; the majority specifically declined to reach the issue of whether a delayed warrantless search of such items can be made without probable cause because probable cause existed in *Edwards*. In *Chadwick* and *Sanders* police had probable cause to seize the contents of the containers, but the delayed searches were ruled unconstitutional because they were made without a warrant, which of course must be founded upon probable cause. But *Chadwick* and Chief Justice Burger's concurrence in *Sanders* make clear that the legitimate expectations of privacy existing in the contents of closed containers are not extinguished regardless of the container's propinquity to the arrestee. Once the de-

fendant is taken into custody and the container is placed in police possession, the justification to search the contents without probable cause—to prevent the destruction of evidence, injury to police, or escape of the arrestee—disappears. We believe that after *Chadwick* and *Sanders*, no longer will the search-incident-to-arrest exception to the warrant requirement also authorize delayed searches of items immediately associated with the arrestee without probable cause. Here, without reaching the issue of whether the defendant's wallet falls within *Chadwick*'s "immediately associated" exception to the warrant requirement, we hold that even where closed containers are immediately associated with the arrestee's person, police may not search and seize its contents at the station house without independently based probable cause.

Nor did the instant station house examination constitute a valid inventory of the wallet's contents. Even though an inventory is not technically considered to be a search (*South Dakota v. Opperman* (1976), 428 U.S. 364, 49 L. Ed. 2d 1000, 96 S. Ct. 3092), it nonetheless invades legitimate expectations of privacy and that intrusion is tested for its constitutionality by an application of the fourth amendment reasonableness standard. (*People v. Bayles* (1980), 82 Ill. 2d 128, 411 N.E.2d 1346.) Our supreme court in *Bayles* and *Helm* announced that personal containers seized incident to a lawful arrest may not be opened and inventories absent exigent circumstances which justify the intrusion. Instead property must be sealed if possible and properly stored. Here, the wallet's nature did not prevent it from being safely sealed and stored to protect the items kept inside and to protect police from claims of lost property. *People v. Lafayette* (3rd Dist., 1981), 99 Ill. App. 3d 830, 425 N.E.2d 1383.

For the foregoing reasons, we affirm the order suppressing evidence entered in the circuit court of Rock Island County.

Affirmed.

ALLOY and SCOTT, JJ., concur.

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

October 5, 1982

State's Attorneys Appellate
Service Commission
Third Judicial District
P. O. Box 654
Ottawa, Illinois 61350

No. 57164—People State of Illinois, petitioner, vs. Warren L. Bean, respondent. Leave to appeal, Appellate Court, Third District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

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No. 82-948

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

WARREN L. BEAN, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE

APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

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COUNSEL FOR RESPONDENT

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OF COUNSEL

QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court should review the propriety of a search which was properly held invalid under controlling state precedents.

2. Whether the warrantless, non-consensual search of an arrestee's wallet during booking procedures is authorized as a delayed search incident to arrest or as a proper inventory search in the absence of exigent circumstances or probable cause.

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No. 82-948

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

WARREN L. BEAN, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE

APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, is reported at 107 Ill. App. 3d 662, 437 N.E.2d 1295 (3d Dist. 1982).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for Writ of Certiorari (Petition at 1-2). However, as treated more fully in the argument portion of this Brief in Opposition, which this Court requested be filed by March 7, 1983, respondent does not believe that the petitioner has shown any compelling reason for this Court to grant the Writ of Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner has quoted the provisions of the United States Constitution applicable to this case (Petition at 2).

STATUTE INVOLVED

Ill. Rev. Stat. 1981, ch. 38, §108-1.

> Search without Warrant. When a lawful arrest is effected a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:
>
> (a) Protecting the officer from attack; or
>
> (b) Preventing the person from escaping; or
>
> (c) Discovering the fruits of the crime; or
>
> (d) Discovering any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, an offense.

STATEMENT OF THE CASE

Petitioner's Statement of the Case adequately presents the facts pertaining to the questions presented. Respondent would note that all the evidence at the suppression hearing was presented in a stipulation which covers three pages in the record.

REASONS FOR DENYING THE WRIT

I.

THE ILLINOIS TRIAL AND APPELLATE COURTS PROPERLY SUPPRESSED THE EVIDENCE FOUND IN A SEARCH OF DEFENDANT'S WALLET UNDER CONTROLLING STATE PRECEDENTS.

The State has asked this Honorable Court to grant certiorari to determine whether a defendant's wallet may properly be searched at the police station after his arrest at another location at an earlier time. The State contends that the search

of a wallet in a defendant's possession at the time of arrest can be conducted at the station as either a delayed search incident to arrest or an inventory search. The state's position is that the station-house search of respondent's wallet was justified and reasonable under the Fourth Amendment, and the state has relied upon earlier decisions of this Court interpreting that amendment.

However, the decision of the Illinois trial and appellate courts in this cause may be sustained under state law, so this Court should decline to review the state court opinion. Under Illinois law, the search of the contents of the wallet was not justifiable as a delayed search incident to arrest or an inventory search. The federal constitutional question need not be reached.

It first must be stressed that the instant case has been a an appeal by the state to the Illinois reviewing courts. The trial court granted the respondent's motion to suppress evidence. Unless that court entered a manifestly erroneous order, its decision must be affirmed, as was done by the appellate court. People v. Fuentes, 91 Ill. App. 3d 71, 414 N.E.2d 876 (3d Dist. 1980). The Illinois Supreme Court has recognized the general rule that a warrantless search of luggage or "any other container of personal effects" is unconstitutional unless it can be justified under an established exception to the warrant requirement. People v. Bayles, 82 Ill. 2d 128, 411 N.E.2d 1346 (1980), cert. denied 453 U.S. 923 (1981); U.S. Const. amend. IV; Ill. Const. of 1970, art. I, §6. The state bears the burden to establish the exception. People v. Rinaldo, 80 Ill. App. 3d 433, 399 N.E.2d 1027 (2d Dist. 1980); See Arkansas v. Sanders, 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979). The finding of the Illinois trial court that the state did not meet its burden was not manifestly erroneous and was properly affirmed on appeal.

The trial court's resolution of the merits of the motion to suppress is supported by Illinois law. The court first ruled that the respondent possessed an expectation of privacy in the wallet, independent of his body and clothing, and that the search of the wallet remote from the time and place of arrest was unreasonable. Thus, the court determined that the search of the wallet did not constitute a valid search incident to respondent's arrest.

Such a conclusion was proper under the Illinois statute which delineates when and where a police officer may search incident to an arrest. Ill. Rev. Stat. 1981, ch. 38, §108-1. An officer may only search for certain purposes, and none of those purposes was involved in the case at bar. Once the respondent was taken into custody and transported to the station where he turned over his wallet, there was no need to search the wallet to protect the police or prevent an escape. The crimes of battery and resisting arrest for which the respondent was arrested had no fruits, and no evidence or instrumentalities of those offenses could be in the wallet.

In a case similar to that at bar, involving the search of a purse after a battery arrest, the Illinois Supreme Court upheld the suppression of evidence from the purse, citing both Section 108-1 and the Illinois Constitution. People v. Helm, 89 Ill. 2d 34, 431 N.E.2d 1033 (1981). The Illinois Supreme Court held that the requirements of Section 108-1 for a search incident to arrest had not been satisfied where Helm was arrested at home and carried her purse to the station, where it was seized and searched. The Illinois Appellate Court relied on Helm in deciding the analogous case at bar. In light of Section 108-1 and the precedent in Helm, the Illinois courts properly ordered the suppression of the evidence from respondent's wallet on state grounds, so no federal question requires review here.

The trial court also resolved the inventory search question under Illinois law. The court ruled that

> . . . the search of the wallet did not constitute valid inventorying of its contents because there was no possibility of potential harm presented by defendant's wallet and because the preservation of the defendant's property and the protection of the police from claims of lost or stolen property could have been achieved in a less intrusive manner.

The trial court relied on such cases as People v. Bayles, 411 N.E.2d 1346 in reaching its conclusion. In upholding the trial court's decision, the Illinois Appellate Court cited Bayles and Helm and stated that

> Our supreme court in Bayles and Helm announced that personal containers seized incident to a lawful arrest may not be opened and inventoried absent exigent circumstances which justify the intrusion. Instead property must be sealed if possible and properly stored. 437 N.E.2d at 1300.

Thus, the Illinois courts which have heard this case have applied settled Illinois law in concluding that the contents of the wallet were not properly searched as an inventory. Illinois decisions have recognized the expectation of privacy which exists in closed containers of personal effects and have barred inventory searches of such containers. See also People v. Hamilton, 74 Ill. App. 3d 457, 386 N.E.2d 53 (1979); People v. Redmond, 73 Ill. App. 3d 160, 390 N.E.2d 1364 (1st Dist. 1979). Under Illinois law, as cited by the trial and appellate courts, the search of defendant's wallet was properly found unlawful. This Court need not review this case under federal constitutional principles on the inventory search question either.

Because the opinion of the Illinois Appellate Court and the ruling of the trial court were proper under settled Illinois law, there is no compelling reason for this Court to review the case at bar.

II.

EVEN IF THE FEDERAL CONSTITUTIONAL QUESTIONS IN THIS CASE ARE CONSIDERED, THE ILLINOIS COURTS CORRECTLY HELD THAT THE SEARCH OF RESPONDENT'S WALLET WAS NOT A VALID SEARCH INCIDENT TO ARREST OR INVENTORY SEARCH.

If this Honorable Court should determine that the holdings of the Illinois trial and appellate courts should not be upheld under state law, this Court should nevertheless deny the petition for writ of certiorari in this cause. The Illinois courts correctly applied federal constitutional law pertaining to searches in suppressing the evidence discovered in the search of respondent's wallet. On the sparse record before the trial court at the suppression hearing, the motion to suppress was properly granted. The State did not sustain its burden of justifying the warrantless, non-consensual search. Arkansas v. Sanders, 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979).

The State urges this Court to review the case at bar along with People v. Lafayette, 99 Ill. App. 3d 830, 425 N.E.2d 1383 (3d Dist. 1981), petition for cert. granted, ___ U.S. ___, No. 81-1859 (Nov. 8, 1982). In Lafayette, this Court is reviewing the propriety of a station-house search of a shoulder bag or purse upon the arrest of the defendant. So Lafayette and the case at bar evidence similar questions. The State concedes that a similar expectation of privacy exists in a wallet as the container in Lafayette. This Court's recent decision in United States v. Ross, __ U.S. ___, 102 S. Ct. 2157, 72 L. Ed. 2d 572, 592 (1982) certainly indicates that, for Fourth Amendment purposes, distinctions should not be made on the basis of the nature or type of repository for personal effects. A wallet in an arrestee's pocket should not be treated differently from a purse or shoulder bag under his arm. The same principles should apply to post-arrest station-house searches of purses and wallets.

Accordingly, the respondent in the case at bar would ask this Court to deny the petition in this cause because the Illinois courts correctly resolved the merits of the search issues here as in Lafayette. The respondent would rely heavily on the respondent's brief and the brief of the amicus curiae, the California State Public Defender, in Illinois v. Lafayette. The search of respondent's wallet was not justified as a search incident to his arrest or an inventory search.

A. THE SEARCH OF RESPONDENT'S WALLET AT THE POLICE STATION WAS NOT A VALID SEARCH INCIDENT TO HIS ARREST WHERE THE DELAYED SEARCH WAS REMOTE FROM THE PLACE OF ARREST AND NO EXIGENT CIRCUMSTANCES OR PROBABLE CAUSE EXISTED.

The state urges this Court to find that the station-house search of respondent's wallet was a valid search incident to his arrest. The state relies on United States v. Robinson, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973), where this Court ruled that the authority to search a person incident to his arrest does not depend on the probability that evidence or weapons will be found, and United States v. Edwards, 415 U.S. 800, 94 S. Ct. 1234, 39 L. Ed 2d 771 (1974), where this Court indicated that a defendant's person and the property "in his immediate possession" may be searched at the station after his arrest at another site. The state goes on to list various federal and state cases which have upheld station-house wallet searches as being incident to the arrest of a defendant elsewhere.

This Honorable Court should decline review in this case and reject the state's position because the state has failed to take into account the impact of the "closed container" cases on earlier decisions such as Robinson and Edwards. This Court has long recognized that a search incident to arrest may not be

conducted "remote in time or place from the arrest." Preston v. United States, 376 U.S. 364, 84 S. Ct. 881, 11 L. Ed. 2d 777 (1964). Insofar as repositories of closed containers are concerned, this Court barred delayed searches incident to arrest in United States v. Chadwick, 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977).

> [W]arrantless searches of luggage or other properties seized at the time of an arrest cannot be justified as incident to that arrest either if the "search is remote in time or place from the arrest," Preston v. United States, 376 U.S. at 367, or no exigency exists. Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest. 433 U.S. at 15.

The Chadwick decision limits the application of Edwards to searches of an arrestee's person and his clothing as an incident of arrest. An independent expectation of privacy exists in repositories of personal effects. Any container, be it a wallet, purse, shoulder bag, envelope, or something else in which an expectation of privacy exists (See United States v. Ross) may not be searched at the station house when the arrestee has been removed from the time and place of arrest. See New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981), which upheld a contemporaneous search of containers incident to the arrest of the occupant of a car, and the respondent's brief in Illinois v. Lafayette, at 27-30, 35-38, and the brief of the amicus curiae at 5-18.

The dicta in Chadwick about "personal property not immediately associated with the arrestee's person" should not be read to mean that some repositories of personal effects can be examined in a delayed search incident to an arrest (See

respondent's brief in Lafayette at 38-42).[1] The Edwards case involved a delayed search of the arrestee's clothing. The concept of personal property immediately associated with the person should be limited to his clothing and not extend to containers which may be removed from the pockets of that clothing or readily separated from that clothing. Otherwise even containers such as envelopes, which could contain extremely personal documents (e.g., letters or financial statements), would be open to search without good cause. An arrestee should not be subjected to unnecessary and potentially embarrassing disclosures of his intimate affairs just by virtue of an arrest where no other basis for a search of his repositories of personal effects exists. See Ex Parte Jackson, 96 U.S. 727, 733, 24 L. Ed. 877 (1878).

The respondent would urge this Court to take the position that delayed station-house searches of containers of personal effects in police control incident to arrest are improper in the absence of exigent circumstances where the containers are removable from the arrestee's clothing (See Respondent's brief in Lafayette at 41-42 and brief of amicus curiae at 13-18). Under such a rule, which is consistent with Chadwick, Arkansas v. Sanders, and Ross, the Illinois courts correctly decided the case at bar, so review is unnecessary. The respondent's wallet was in exclusive police control at the station before its contents were searched and no exigent circumstances were present. The state had authority to seize the wallet, but not to search it. Chadwick, 433 U.S. at 10.

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[1]Most of the cases which the state cites (Petition at 8-10) either predate Chadwick or fail to engage in any analysis in light of Chadwick. Those few cases such as United States v. Passaro, 624 F.2d 938 (9th Cir. 1980), cert. denied, 449 U.S. 1113 (1981) and State v. Brown, 634 P.2d 212 (Ore. 1981), which do cite Chadwick fail to recognize the limitations which Chadwick imposed on cases such as Edwards. This Court has never held that repositories of personal effects can be "immediately associated" with an arrestee so as to be subject to search incident to his arrest.

It should be emphasized, as in the opinion of the Illinois Appellate Court, that there was no probable cause to believe that the wallet contained contraband, a weapon or evidence of a crime. The respondent was arrested for an offense which involved no fruits or instrumentalities and, so far as the record shows, the police had no reason to suspect that he had a weapon. In the absence of probable cause, the reasonableness of a search of a container in which a significant expectation of privacy rests is certainly questionable. The reduced expectation of privacy in the person of an arrestee should not be applied to containers which he carried in the absence of probable cause pertaining to the containers, at least once those containers are in police control. 437 N.E.2d at 1299; Chadwick, 433 U.S. at 16, n.10. In the absence of probable cause, any repository in police control should not be opened as an incident to arrest since control of the object prevents the destruction of evidence or the defendant's obtaining a weapon.[2]

This Court should refuse to review the case at bar because the warrantless, nonconsensual search of defendant's wallet at the police station in the absence of probable cause or exigent circumstances was not a proper search incident to arrest. The Illinois Appellate Court properly concluded that a container such as a wallet should not be subject to a delayed search after an arrest.

B. THE SEARCH OF RESPONDENT'S WALLET WAS NOT A PROPER INVENTORY SEARCH WHERE THERE WAS NO NEED TO OPEN THE WALLET AND THE OBJECTIVES OF AN INVENTORY SEARCH COULD HAVE BEEN ACCOMPLISHED BY SEALING THE WALLET AND SECURING IT IN A LOCKER.

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[2]Notably, there was probable cause for the delayed search of defendant's clothing in United States v. Edwards.

The second rationale which the state advances to justify the search of respondent's wallet is that the wallet was properly searched as part of an inventory of respondent's belongings during booking. The stipulation of facts in this case indicates that the respondent was ordered to turn over all his property during booking and that the wallet was searched as an inventory procedure.[3] The state relies on this Court's decision in South Dakota v. Opperman, 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976) to support its claim that an inventory of respondent's possessions, including his wallet, was proper.

In light of the rationale for inventory searches as defined by this Court in Opperman, the respondent would submit that the Illinois trial and appellate courts correctly held the inventory search of the wallet to be invalid. It must be emphasized that the wallet was a repository of personal effects in which the respondent had a significant expectation of privacy -- a fact which the State has not disputed. Certainly far greater privacy interests attach to a wallet than an automobile, as was recognized by this Court in Opperman (See respondent's brief in Illinois v. Lafayette, at 9-10). The wallet was not being taken to respondent's jail cell, but rather was being seized for safekeeping by the police. See Bell v. Wolfish, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). The police could have accomplished their purpose without intruding on respondent's privacy rights by examining the contents of the wallet, so the inventory search was properly held to be unlawful by the Illinois courts.

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[3]Since the stipulated facts indicate that the wallet was searched during an inventory, the record in the case at bar does not really support the search-incident-to-arrest theory. There was little development of that theory at the suppression hearing. The trial court made a ruling on the search-incident-to-arrest theory, but the sparseness of the record is another reason why review of that theory is not warranted in this case (See respondent's brief in Illinois v. Lafayette at 26). The inventory and search-incident-to-arrest theories should not be commingled (See respondent's brief in Lafayette at 7-8), and there is no compelling reason to review either one.

This Court has never held that inventory searches of repositories of personal effects, such as wallets or luggage, are justified. Pursuant to Opperman, inventory searches are tested under the reasonableness standard of the Fourth Amendment. A needless intrusion into a closed container is not reasonable. Even in upholding the automobile inventory in Opperman, this Court restricted the scope of an inventory procedure so as to protect containers (See respondent's brief in Lafayette at 11-13). The individual's privacy interests in containers such as luggage and wallets should prevail over the police interests in conducting an inventory.

Three such police interests were recognized in Opperman -- (1) protection of the owner's property while in police custody, (2) protection of the police from claims of lost or stolen property and (3) protection of the police against danger. None of those three interests was at all compelling in the case at bar so as to override respondent's privacy interest in the wallet. There is no need to search the contents of a wallet or other container to serve the police interests. The sealing and securing of containers as units protects the police from danger, safeguards the containers and their contents and protects the police from false claims. A wallet can be taped shut or sealed in a bag in the arrestee's presence and then be stored in a locker, thus satisfying the police interests (See respondent's brief in Lafayette at 13-17).

The determination of the Illinois courts that the search of the wallet was unlawful was certainly justified on the record here. There were no exigent circumstances to suggest a need to open the wallet. There was no reason to believe that the wallet or its contents posed a threat to the police. The respondent did not consent to the search. The total circumstances of this case (Opperman, 428 U.S. at 375) justify the conclusion of the Illinois courts. And that conclusion is consistent with the

prevailing case law from other jurisdictions on inventory searches of repositories of personal effects (See respondent's brief in Lafayette at 13 and the brief of the amicus curiae at 18-30). Review of this case is not compelled.

Adoption of the state's position would severely erode the right to privacy for arrested persons. The police should not open containers absent a specific reason or exigency. The State's attempt to equate pockets with containers is not persuasive. Clothing is difficult to seal shut, as items may readily fall out. And the arrestee may be called upon to wear the clothing in the jail or at a court appearance, so access to the pockets is a concern. The expectation of privacy in containers of personal effects which can readily be removed from clothing should not be infringed upon unnecessarily. The instant case has been decided by the Illinois courts consistently with a clear, enforceable and reasonable rule that repositories of personal effects should be inventoried as a unit. The State's petition, which contains little discussion of inventory searches but urges that they not be limited, should be denied. This Court has never permitted unlimited inventory searches and should not permit unreasonable intrusions into containers. The police have no right to conduct inventory searches, so this Court should not seek to protect such a state interest.

CONCLUSION

For the foregoing reasons, respondent prays that this Honorable Court deny the state's Petition for Writ of Certiorari.

Respectfully submitted,

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COUNSEL FOR RESPONDENT

NO. 82-948

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

WARREN L. BEAN, Respondent

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent, Warren L. Bean, by and through his counsel, Robert Agostinelli, Deputy Defender, Office of the State Appellate Defender, Third Judicial District, requests leave to file the attached Brief for Respondent in Opposition, without pre-payment of costs and to proceed in forma pauperis pursuant to Rule 46. The Respondent was previously granted leave to proceed in forma pauperis in this cause both in the Illinois Appellate and Supreme Courts.

The Respondent's affidavit in support of this Motion is attached hereto.

Robert Agostinelli
ROBERT AGOSTINELLI

SUBSCRIBED AND SWORN TO
Before me this 7 day
of March 1983.

NOTARY PUBLIC

NO. 82-948

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

WARREN L. BEAN, Respondent

I, Warren L. Bean, being first duly sworn according to law, depose and say, in support of my Motion for Leave to Proceed without being required to prepay costs and fees:

1. I am the Respondent in the above-entitled cause.

2. Because of my poverty I am unable to pay the costs of said cause.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress I seek in said cause.

5. I was determined to be indigent by the Circuit Court of Rock Island County, Illinois and counsel was appointed to represent me on appeal to the Illinois Appellate and Supreme Courts.

FURTHER Affiant sayeth not.

Warren L Bean
WARREN L. BEAN

SUBSCRIBED AND SWORN TO
Before me this 30th day
of February, 1983.

Eugenia M Sabo
NOTARY PUBLIC

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES MAR 19 1985
[illegible] NOTARY ASSOC

No. 82-948

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

WARREN L. BEAN, Respondent.

CERTIFICATE OF SERVICE

I, Robert Agostinelli, a member of the bar of this Court and representing Respondent in this cause, certify:

(1) That I have served one copy of the Motion for Leave to Proceed in Forma Pauperis, the Affidavit in support thereof, and Brief for Respondent in Opposition on Counsel for Petitioner, by depositing same in a United States Post Office mail box at 628 Columbus Street, Ottawa, Illinois 61350, with first class postage prepaid, and with the envelope addressed as follows:

Honorable Neil Hartigan
Attorney General
188 West Randolph - Suite 2200
Chicago, Illinois 60601

(2) The above named party is the only party required to be served.

(3) I further state to the best of my knowledge that the Court's copies of these documents were enclosed in an envelope, properly addressed to the Clerk of this Court, and that said envelope was deposited in a United

States Mail Box at 628 Columbus Street, Ottawa, Illinois 61350, with first class postage prepaid on the 3rd day of March, 1983, which is within the permitted time of filing.

Robert Agostinelli
ROBERT AGOSTINELLI

SUBSCRIBED AND SWORN TO
Before me this 3rd day
of March, 1983.

Donna Lee
Notary Public